

October 14, 2002

Kathleen Sheehy, Administrative Law Judge
Office of Administrative Hearings
100 Washington Square, Suite 1700
100 Washington Avenue South
Minneapolis, MN 55401-2138

RE: OAH Docket No. 58-2901-15002-1
Amendment of Power Plant Siting Rules
Minnesota Rules Chapter 4400

Dear Judge Sheehy:

The Department of Natural Resources (DNR) has reviewed the proposed amendments to the Power Plant Siting Rules, which are found Minnesota Rules Chapter 4400. Our comments focus on two areas: 1) notice and distribution requirements for documents prepared under the rules, and 2) ensuring that water availability is given early consideration.

Notice and Distribution Requirements

Our experience with the “interim” rules since they were adopted a year ago has revealed insufficient project notification and document distribution procedures. During this time, we received notification of only one project undergoing the “local” process, although we understand from EQB staff that more than six “local” projects are in progress. There have been no EQB Monitor notices for these projects. Under the proposed rules, even for projects undergoing EQB review and permitting, agencies will receive documents only if they request them, which will require constant monitoring of project notices, and waiting (during the abbreviated comment periods) to actually receive the documents before agency review can commence. The proposed rules will require maintenance of a number of “project contact lists” and will require each interested EQB member agency to separately contact the permitting unit of government to insure listing on the contact list. Each agency will also have to make separate requests for any documents associated with the review.

It is our view that the EQB’s EAW mailing list (which includes most EQB member agencies, several potentially affected federal agencies, and conservation and reference libraries) should be used in addition to “Master” and “Project” lists for project notification, and that all siting-related documents (scoping decisions, draft and final EISs, Environmental Assessments, responses to comments, and final decisions) should automatically be distributed to the parties on the EAW mailing list. The rules as proposed do not require automatic distribution of these documents.

Water Availability

Water availability can be a constraining factor in siting power plants. We would like the rules to ensure that applicants consider this issue prior to submitting a siting application, i.e., when they initially begin site evaluation and selection.

To that end, we recommend the following specific changes to the proposed rules:

Part 4400.1500 Contents of the Application

Subpart 1. (Site Permit for LEPGP). Add the following to the list of information requested: “water requirements to supply average and peak demands and hydrologic analysis documenting the adequacy of proposed water sources at each site.”

Subpart 3. (Environmental information). Add “identification of potential resource impacts from water appropriations, a monitoring plan to evaluate water resource impacts, and a list of water conservation measures that will be employed,” to the list of required environmental information.

Part 4400.3150 (Factors considered)

This section also should include the consideration of water availability and effects to groundwater resources. We recognize that part 4400.3450 (Prohibited Sites), Subpart 5, indicates a site may not be designated where there is not reasonable access to a proven water supply, but believe the issue merits mentioning factors to be considered in this section as well.

Part 4400.3450 (Prohibited Sites)

Subpart 1. Because only temporary water appropriation permits (two years maximum) may be issued for trout streams (Minnesota Statutes 103G.285, Subdivision 5), it is our view that trout streams should be included as prohibited sites in Subpart 1 rather than as site exclusions under Subpart 3.

Additionally, Subpart 2 of this section (Water Use) is worded so that it might be inferred that the Environmental Quality Board issues water appropriation and discharge permits. To insure applicants are aware of potential DNR and MPCA permit requirements, we recommend adding language such as, “that are consistent with statutes and rules administered by the DNR and MPCA,” to the end of the first sentence.

Subpart 5 (Sufficient water supply required). We suggest the following changes: add “[T]he applicant must be able to obtain a water appropriation permit required by Minnesota Statutes 103G.271, Subdivision 1 from the Department of Natural Resources for the proposed sources of water” before the first sentence, and amend the second sentence to read “[N]o use of groundwater may be permitted where removal of groundwater results in material adverse effects on groundwater, groundwater dependent natural resources, and higher priority users in the adjacent area, as determined in each case.”

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Thank you for your consideration of these comments. Please contact me with any questions regarding this letter.

Sincerely,

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